

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

STATE OF TEXAS,)
STATE OF MISSOURI,)
)
Plaintiffs,)
)
v.) Civil Action No. 2:21-cv-00067-Z
)
JOSEPH R. BIDEN, JR.,)
in his official capacity as)
President of the United States, *et al.*,)
)
Defendants.)
)

JOINT STATUS REPORT AND PROPOSAL ON FURTHER PROCEEDINGS

The Parties jointly submit the following proposal for additional proceedings in this matter now that Defendants have dismissed their interlocutory appeal and answered the Second Amended Complaint.

Following remand from the Supreme Court and the Fifth Circuit, on August 8, 2022, the Court vacated the permanent injunction that had previously been entered in this case, ECF No. 147, and Plaintiffs submitted a Second Amended Complaint, ECF No. 148. The Parties subsequently briefed a motion to postpone the effective date of the October 29, 2021 Memorandum from the Secretary of Homeland Security ending the Migrant Protection Protocols. ECF Nos. 149, 163, 168, 173, 175. On August 15, 2022, the Court entered an order that stayed Defendants' deadline to answer or otherwise respond to the Second Amended Complaint until after the Court resolved Plaintiffs' motion to postpone. ECF No. 155.

On December 15, 2022, the Court issued an Opinion and Order on Plaintiffs' motion and stayed the October 29 Memorandum pending final resolution of the merits of this action. ECF No. 178. Defendants then moved to extend their answer deadline to allow the Solicitor General to determine whether to pursue an interlocutory appeal of the stay order, and filed a protective notice of appeal to preserve Defendants' ability to appeal. *See, e.g.*, ECF No. 192. The Solicitor General ultimately decided not to pursue an interlocutory appeal. Accordingly, on May 15, 2023, Defendants filed an answer to the Second Amended Complaint, *see* ECF No. 196, and dismissed their interlocutory appeal.

The Parties have now conferred on how this case should proceed and have reached an agreement on the following proposal. The Parties stipulate that the previously filed briefs related to Plaintiffs' Motion to Postpone, *e.g.*, ECF Nos. 149, 163, 168, 173, 175, should be treated as summary judgment briefing in this matter but request that the Court permit the Parties to submit additional briefs addressing any developments since the filing of those briefs or issues not addressed in those briefs that will be necessary to this Court's resolution of this case on the merits.

For the following reasons, the Parties propose that the schedule for that additional briefing be set sometime later in the summer. First, such a schedule will give the Supreme Court time to issue a decision in *United States v. Texas*, No. 22-40367 (argued Nov. 29, 2022), which may address a number of issues that could affect this Court's resolution of the issues in this case. Among other things, the Supreme Court may address the requirements of State standing to challenge federal immigration policies, Section 1252(f) and Section 1252(a)(2)(B)(ii), and limits on the scope of relief that is permitted under the APA in immigration cases. Second, counsel for both Parties have competing deadlines in other matters in the coming months, including pretrial deadlines and a trial scheduled for mid-June in *Texas v. U.S. Dep't of Homeland Sec.*, No. 6:23-

cv-00007 (S.D. Tex.), that would make completing briefing in this case in the coming month difficult.

Accordingly, the Parties propose that the Court set a deadline of June 30, 2023, for the Parties to further confer and submit a proposed schedule for the remaining briefing necessary to resolve this matter on the merits.

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Dated: May 17, 2023.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2023, I electronically filed this motion with the Clerk of the Court for the United States District Court for the Northern District of Texas by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Brian C. Ward
BRIAN C. WARD
U.S. Department of Justice